

WRITTEN TESTIMONY
OF
DON SCHELLHARDT, ESQUIRE,
PRESIDENT OF
THE AMHERST ALLIANCE,
ON BEHALF OF
THE AMHERST ALLIANCE

BEFORE HEARINGS OF
THE FCC'S
LOCALISM TASK FORCE
Rapid City, South Dakota

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I am Don Schellhardt, Esquire, the present President of THE AMHERST ALLIANCE. I am a Government Relations Attorney and a writer, currently in solo practice. I co-founded THE AMHERST ALLIANCE and now represent it as one of several clients.

THE AMHERST ALLIANCE is a Net-based, nationwide citizens' advocacy group. We are champions of Low Power Radio in particular and of more accessible public airwaves in general. We have been fighting for these goals, with some success, since September 17, 1998: the date of our founding at a meeting in Amherst, Massachusetts.

Amherst has already made several filings with the Localism Task Force, for which reason the Task Force is hopefully familiar with our basic public policy recommendations. In light of our well-established record in these proceedings, I will limit this Written Testimony to 3 new points:

- 1. We are concerned that the Localism Task Force has lost some of its previous momentum.**
- 2. We are concerned that the Localism Task Force may have narrowed its focus unduly.**
- 3. We are submitting new evidence regarding why the Localism Task Force should recommend immediate action on the requests made by THE AMHERST ALLIANCE, and 52 other parties, in a November 14, 2003 Petition For Expedited Relief Through Rulemaking. This Petition has gained 10 additional signatories since the filing date.**

THE POSSIBLE LOSS OF TASK FORCE MOMENTUM

THE AMHERST ALLIANCE is concerned by the Commission's decisions, made this spring, to extend the time frame for the Localism Task Force deliberations.

Originally, as you know, the Task Force was scheduled to hold a total of 6 Hearings, 5 of them in the field, with a final Hearing in Washington, D.C. during June of 2004. This would have allowed at least the possibility that proposed rules might be issued this summer, with comment periods being held this fall.

Unfortunately, it is almost June of 2004 right now -- with the Maine, California and Washington, D.C. Hearings still pending. Not only have these Hearings been pushed into the future, they have been pushed into the *indefinite* future. To the best of our knowledge, no dates have been set for the remaining Hearings -- which means that no one can predict when the Localism Task Force will complete its work.

At the present rate, a new President could be in office by the time the public sees proposed rules to promote localism.

This delay is particularly ironic in light of the "warp speed" at which the Commission is currently processing a new system of regulatory oversight for Broadband Over Powerlines (BPL) technology.

In those proceedings, which are now underway in Docket 04-37, the FCC is in such a rush that it is currently allowing interested parties only 36 days to prepare their Comments on Phase I of a major technical study by the National Telecommunications and Information Administration (NTIA). In addition, it is allowing interested parties *no time at all* to review Phase II of that study -- since the NTIA has not yet completed Phase II and the FCC has so far refused to extend the comment period long enough to allow Phase II's completion.

To add to the irony, there is clearly a *huge* constituency, among the general public, for greater localism in broadcasting. This was demonstrated by last year's public and Congressional outcry against the FCC's loosening of media ownership ceilings, and also by the enormous crowds attending those Localism Task Force Hearings which have been held so far. Yet it is BPL technology, which is virtually unknown to the general public and backed only by a handful of corporations, that has been placed on "the fast-if-not-reckless-track".

We remind the Localism Task Force that, even following enactment of the Telecommunications Act of 1996, the Commission still carries a residual legal obligation to serve *the public* -- and, indeed, to place its compelling needs *first*.

We urge the Localism Task Force to restore the best of the FCC's traditions by setting firm dates for the remaining Task Force Hearings -- *and* placing these dates as near in the future as possible.

THE POSSIBLE UNDUE CONTRACTION OF TASK FORCE FOCUS

Over the course of the Localism Task Force deliberations, THE AMHERST ALLIANCE has seen indications that the Localism Task Force *may* be focusing its attention too narrowly. We are not at all certain that this is the case, but we wish to express our concern that it *might* be the case.

At the birth of the Localism Task Force, FCC Chairman Michael Powell issued a statement which immediately appeared on -- and still remains on -- the Task Force Web Site. Chairman Powell stated:

I created the Localism Task Force to evaluate how broadcasters are serving their local communities. Broadcasters must serve the public interest, and the Commission has consistently interpreted this to require broadcast licensees to air programming that is responsive to the interests and needs of their communities.

Last week, in announcing the applicable procedures for today's Hearing in Rapid City, a Commission press release stated:

An important focus of the hearing will be to gather information and to conduct outreach for the ongoing nationwide round of broadcast station license renewals.

Both of these statements stress ways to make the existing licensing system somewhat better, but do not imply that *the system itself* will be open to change.

We certainly agree the existing FCC requirements for customer-responsive programming should be enforced much more vigorously. We also agree, heartily, that broadcast station license renewals should be scrutinized much more carefully, with an eye to each station's local coverage -- and its service to "the public interest" in general.

What concerns us is not the *presence* of these goals, in statements about the Task Force agenda, but rather the *absence* of similar pronouncements about -- for example -- restraining and then reversing the proliferation of satellite-fed translators *and/or* reconsidering the trend toward easing of media ownership ceilings. We hope consideration of such fundamental reforms will not be "lost in the shuffle".

To put our point in a nutshell:

It will be *helpful*, but not *sufficient*, to require existing broadcast license holders to provide more coverage of local news, play more music by local artists and take other steps to make nationwide broadcast chains somewhat less distant and impersonal. This is *part* of the solution, but only part -- and, in our view, the less important part.

We urge the Localism Task Force to adopt explicitly, and proceed to act upon, the basic principle that increased local *ownership* of stations is the fastest *and* most reliable route to increased local *content* on the airwaves.

Once this principle is acknowledged, and applied, the issues of translator/Service Status reform, IBOC interference adjustments, LPFM channel spacing reform, a Low Power *AM* Radio Service and reduction of media ownership ceilings tumble naturally onto the agenda.

NEW EVIDENCE
OF THE NEED FOR ACTION ON
TRANSLATOR/SERVICE STATUS REFORM
AND IBOC INTERFERENCE ADJUSTMENTS

In our various filings in this Docket, THE AMHERST ALLIANCE has urged the Localism Task Force to urge action by the Commission to achieve each of several goals.

In terms of *urgency* (“the need for speed”), which is not necessarily the same as *importance*, we rank our top Task Force recommendations as follows:

- 1. Translator/Service Status Reform (per the AMHERST ET AL. Petition For Expedited Relief of November 14, 2003):**
 - (A) Primary Service Status for all Low Power Radio stations (LP-100 and LP-10)**
 - (B) A new, TERTIARY Service Status for satellite-Fed translator stations (aka “satellators”) and other long distance translators**

2. IBOC Interference Adjustments (per the AMHERST ET AL. Petition For Expedited Relief of November 14, 2003):

Allowing radio stations, or at least Low Power Radio stations, to seek approval for case-by-case wattage and/or tower height adjustments -- where this is demonstrably necessary to offset the erosion of originally authorized service areas by IBOC-induced interference

3. Repeal of the current channel spacing restrictions on Low Power FM stations, which were imposed by a “lame duck” Session of Congress in 2000

4. Establishment of a new, Low Power AM Radio Service (per the FRED BAUMGARTNER, C.P.B.E. Petition For Rulemaking, filed on November 22, 2003, ideally as modified by the recommendations of THE LOW POWER AM TEAM in its December 5, 2003 Written Comments to the Localism Task Force)

In addition, in this FCC Docket and in several others, THE AMHERST ALLIANCE has called for retaining -- and, over time, reducing -- the limits on media ownership that were loosened by the FCC in June of 2003.

With respect to our 4 most urgent recommendations, we were very pleased to see the FCC’s Report To Congress, in February of 2004, in which the Commission recommended repeal of the current channel spacing limitations for LPFM radio stations.

This was the most that the FCC could do, under current law, to pursue *the third item* on our list of recommendations. Naturally, we are very grateful.

Nevertheless, we are concerned about the lack of action so far on the first, second and fourth items (translator/Service Status reform, IBOC interference adjustments and a new Low Power AM Radio Service).

In an effort to accelerate progress on the single most *urgent* item, which is translator/Service Status reform, THE AMHERST ALLIANCE hereby closes this Written Testimony by submitting For The Record *new evidence* contained in 4 documents. All of them have already been submitted, in separate communications from Amherst, to Senator John McCain, R-AZ ... Senator Ernest Hollings, D-SC ... Senator Conrad Burns, R-MT ... Representative Joe Barton, R-TX ... Representative John Dingell, D-MI ... Representative Fred Upton, R-MI ... Representative Cliff Stearns, R-FL ... and Representative Edward Markey, D-MA.

**APPENDIX A: Statement To Congress by Bruce Elving,
Editor, FM ATLAS on *translator reform***

APPENDIX B: Editorial from RADIO WORLD on *translator reform*

**APPENDIX C: Statement To Congress by John Broomall,
President, CHRISTIAN COMMUNITY BROADCASTERS on *Primary Service Status for Low Power Radio stations***

APPENDIX D: A 2-page overview, by THE AMHERST ALLIANCE, of “ACTIONS NEEDED TO HELP LOW POWER RADIO”

At this time, we have no additional evidence to present on the need for establishing a *Low Power AM Radio Service*. However, we remind the Commission of -- and formally incorporate by reference -- the December 22, 2003 Written Comments which have been filed in this Docket by the MICHIGAN MUSIC IS WORLD CLASS! CAMPAIGN. These Written Comments include a study, by REC NETWORKS of Arizona, which demonstrates that 2nd adjacent channel spacing reform for LPFM will not be enough in itself to bring even one Low Power Radio station to Metropolitan Detroit. To achieve that goal, either Low Power AM or *primary* channel spacing for LPFM must be made available.

We understand that similar situations prevail in Metropolitan Boston, the Twin Cities and other metropolitan areas, too.

Thus, the *only* way some large cities will gain Low Power Radio is through establishment of a new, Low Power AM Radio Service. Primary channel spacing for LPFM may be an alternative for certain cities, but it is likely to be more controversial than LPAM.

CONCLUSIONS

Thank you for your time and attention.

In closing, I urge you once again to:

1. Set firm dates for the remaining Localism Task Force Hearings, placing them as near in the future as possible.
2. Make sure that the Task Force focus includes *increasing the percentage of locally owned broadcast stations*, as the single fastest and most reliable way to *increase the percentage of local content on the airwaves*.
3. Consider carefully the newly submitted evidence on the need for *translator and Service Status reform*.